

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WILLIAM J. KIRSCH)	FOIA Control Nos. 2015-367, 2015-368,
)	2015-369, and 2015-377
On Requests for Inspection of Records)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: October 27, 2015**Released: October 28, 2015**

By the Commission:

1. This order addresses five applications for review (AFRs) filed by William J. Kirsch seeking review of four decisions by the Office of General Counsel (OGC) denying requests for fee waiver in connection with his Freedom of Information Act (FOIA) requests and of responses by the Wireline Competition Bureau (WCB) to his FOIA requests.¹ This is the fourth in a series of Commission orders addressing applications for review and petitions for reconsideration filed by Mr. Kirsch related to his FOIA and Privacy Act (PA) requests.² The four FOIA requests covered by the AFRs we address here seek information related to FCC telecommunications policies, mostly international. In each, Mr. Kirsch

¹ See Email from William Kirsch to FOIA-Appeal re FOIA Control No. 2015-368 (sent April 8, 2015 @ 6:14 pm) (AFR 1); Email from William Kirsch to FOIA-Appeal re FOIA Control Nos. 2015-367, 2015-369, and 2015-377 (sent April 16, 2015 @ 10:49 pm) (AFR 2); Email from William Kirsch to FOIA-Appeal re FOIA Control No. 2015-377 (sent May 6, 2015 @ 8:09 am) (AFR 3); Email from William Kirsch to FOIA-Appeal re FOIA Control No. 2015-377 (sent May 11, 2015 @ 5:02 am) (AFR 4); Email from William Kirsch to FOIA-Appeal re FOIA Control Nos. 2015-367 and 2015-369 (sent May 14, 2015 @ 1:55 pm) (AFR 5).

² Since 2011, Mr. Kirsch has filed dozens of FOIA requests with the FCC, requests that usually seek documents that the agency does not possess or that are described in such broad terms that they would result in the assessment of fees, which Mr. Kirsch has never agreed to pay. Mr. Kirsch has requested a fee waiver in nearly every request; all of his fee waivers have been denied for failure to meet the public interest standard. Mr. Kirsch also has filed numerous applications for review and petitions for reconsideration of the decisions of the Commission and its staff on his requests for information and waiver of fees, all of which have been dismissed or denied. See *In the Matter of William J. Kirsch on Requests for Inspection of Records*, FOIA Control Nos. 2011-552, 2012-176, and 2012-241, 27 FCC Rcd 13772 (2012) (*First FOIA Order*); *In the Matter of William J. Kirsch on Requests for Inspection of Records*, FOIA Control Nos. 2011-552, 2012-176, 2012-241, 2012-294, 2013-019, 2013-073, 2013-118, 2013-151, 2013-152, 2013-291, 2013-298, 2013-299, 2013-300, 2013-301, 2013-302, 2013-303, 2013-304, 2013-305, 2013-306, 2013-307, 2013-308, 2013-309, 2013-310, 2013-311, 2013-356, 2013-357, 2013-358, and 2013-393, 28 FCC Rcd 15280 (2013) (*Second FOIA Order*); *In the Matter of William J. Kirsch on Requests for Inspection of Records*, FOIA Control Nos. 2013-291, 2013-310, 2013-356, 2013-358, 2013-410, 2013-411, 2013-430, 2013-456, 2013-479, 2013-480, 2013-484, 2013-503, 2013-511, 2013-512, 2013-513, 2013-514, 2013-534, 2013-535, 2013-538, 2013-539, 2013-543, 2013-551, 2013-553, 2013-560, 2014-031, 2014-041, and 2014-059, 29 FCC Rcd 10739 (2014) (*Third FOIA Order*).

sought waiver of any associated FOIA fees. OGC denied all four fee waiver requests,³ and Mr. Kirsch seeks review.⁴ Mr. Kirsch also seeks review of the WCB responses⁵ in FOIA Control Nos. 2015-367, 2015-369, and 2015-377.⁶ As explained below, we either dismiss or deny each of these AFRs.

2. We reject Mr. Kirsch's claim that he was not provided any reason for denial of his information requests in FOIA Control Nos. 2015-367 and 2015-369⁷ because, in each case, WCB's response letter and the subsequent email informing him that his request had been closed explain the reasons for its disposition.⁸ Mr. Kirsch's claim that the Bureau's responses were untimely also has no merit.⁹ We deny as vague and unsubstantiated Mr. Kirsch's statements as to the public benefits of his request in FOIA Control No. 2015-377¹⁰ and uphold OGC's previous decision in that case denying a fee

³ See Letter from Elizabeth Lyle, Assistant General Counsel, FCC to William J. Kirsch re FOIA Control No. 2015-368 (April 8, 2015); Letter from Elizabeth Lyle, Assistant General Counsel, FCC to William J. Kirsch re FOIA Control Nos. 2015-367, 2015-369, and 2015-377 (April 16, 2015).

⁴ See AFR 1, AFR 2.

⁵ See Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-367 (April 16, 2015); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-369 (April 16, 2015); Letter from Kirk S. Burgee, Chief of Staff, FCC to William J. Kirsch re FOIA Control No. 2015-377 (May 5, 2015); Letter from Kirk S. Burgee, Chief of Staff, FCC to William J. Kirsch re FOIA Control No. 2015-377 (May 8, 2015); Email to William J. Kirsch re FOIA Control No. 2015-367 (May 13, 2015); Email to William J. Kirsch re FOIA Control No. 2015-369 (May 13, 2015).

⁶ See AFR 2, AFR 3, AFR 4, AFR 5.

⁷ See AFR 5 at para. 2.

⁸ See Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-367 (April 16, 2015); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-369 (April 16, 2015); Email to William J. Kirsch re FOIA Control No. 2015-367 (May 13, 2015); Email to William J. Kirsch re FOIA Control No. 2015-369 (May 13, 2015).

⁹ In both FOIA Control No. 2015-367 and 2015-369, the deadline for responding to the request was tolled in order to resolve fee issues in accordance with section 0.461(e)(2), because processing the request would incur fees and Mr. Kirsch's request for fee waiver was denied. See 47 C.F.R. § 0.461(e)(2); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-367 (April 16, 2015); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-369 (April 16, 2015). The requests were subsequently closed as of April 30, 2015, the fourteen-day deadline specified by WCB, when Mr. Kirsch failed to respond to WCB's request for fee authorization or otherwise communicate with the FCC to resolve the issue of fees. Email to William J. Kirsch re FOIA Control No. 2015-367 (May 13, 2015); Email to William J. Kirsch re FOIA Control No. 2015-369 (May 13, 2015). All of these actions were taken in a timely manner.

¹⁰ See AFR 4 (asserting that grant of Mr. Kirsch's fee waiver request in 2015-377 would (1) "correct a longstanding FCC failure to fully coordinate its rural broadband efforts with the Administration, including the Department of Agriculture and the Department of Commerce, to assist rural telecommunications cooperatives in a free trade friendly manner;" (2) "begin the process of facilitating a FCC consensus rather than a bitter partisan divide on Title II regulations and the Open Internet given the obvious traditional *quid pro quo* between 'rights-of-way' and the need for modernized common carrier regulation that facilitates rather than impedes the expansion of broadband;" (3) "begin the process of better FCC coordination with other agencies such as EPA and facilitate the process of removing of the FCC as a primary barrier to the expansion of climate friendly telecommunications as an alternative to less climate friendly transportation;" and (4) "continues the didactic nature of my FOIA and [P]rivacy [A]ct requests to an FCC untutored for a generation in international telecommunications;" and (5) "begins the process of correcting the longstanding and potentially tragic failure of the FCC to apply the statutory 'same footing as regards privileges' standard for international telecommunications as foreign protectionism and mercantilism continue to have a negative effect on U.S. broadband development extending even to the rural U.S. heartland in the face of an FCC ostrich-like ignorance of the effects of a little America isolationist approach masquerading as promoting free trade").

waiver.¹¹ We also deny as misplaced the claim that OGC failed to provide an estimate of fees in FOIA Control Nos. 2015-367, 2015-368, and 2015-369.¹² As OGC's decisions indicated and consistent with our practice, fee estimates are not included in OGC's decisions on fee waiver requests. Rather, when a fee waiver request is denied, the Bureau assigned to the associated FOIA request responds separately to the requester concerning further processing of the request, and at that point will include an estimate of fees.¹³

3. We dismiss, for failure to allege a particular error as required by section 1.115(b), Mr. Kirsch's generalized claims that OGC's reasoning in denying a fee waiver was insufficient, vague, or incorrect.¹⁴ We also dismiss for failure to allege a particular error Mr. Kirsch's claim that WCB provided an "incomplete analysis of the issues involved" in its response to his FOIA request.¹⁵ We also dismiss claims as to other FCC decisions because he fails to specifically identify those decisions¹⁶ and dismiss various other requests that are not properly within the scope of this FOIA proceeding.¹⁷ We dismiss as moot Mr. Kirsch's objection to his classification as a commercial requester,¹⁸ because WCB has issued a supplemental response rescinding the commercial classification.¹⁹ The remainder of the AFRs consists of numerous assertions and requests, none of which constitute arguments for us to address.²⁰

¹¹ See Letter from Elizabeth Lyle, Assistant General Counsel, FCC to William J. Kirsch re FOIA Control Nos. 2015-367, 2015-369, and 2015-377 at 2 (April 16, 2015).

¹² See AFR 1 at para. 2; AFR 2 at para. 3.

¹³ Mr. Kirsch has been provided separate responses addressing, among other issues, estimated fees for further processing of his four FOIA requests. Moreover, two of these letters, concerning FOIA Control Nos. 2015-367 and 2015-369, had already been provided to Mr. Kirsch by the AFR filing date. Each fee estimate includes the estimated number of hours needed to process his request, contrary to Mr. Kirsch's claims regarding FOIA Control Nos. 2015-367 and 2015-369, *see* AFR 5 at para. 2. See Letter from Howard Griboff, International Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-368 (April 9, 2015); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-367 (April 14, 2015); Letter from Sanford Williams, Wireline Competition Bureau, FCC to William J. Kirsch re FOIA Control No. 2015-369 (April 16, 2015); Letter from Kirk S. Burgee, Chief of Staff, WCB to William J. Kirsch re FOIA Control No. 2015-377 (May 5, 2015); Letter from Kirk S. Burgee, Chief of Staff, WCB to William J. Kirsch re FOIA Control No. 2015-377 (May 8, 2015).

¹⁴ See AFR 1 at para. 2; AFR 2 at para. 1.

¹⁵ See AFR 3 at para. 2.

¹⁶ See, e.g., AFR 4 at para. 2 ("Please provide for review of ... the untimely denial of my [P]rivacy [A]ct correction request").

¹⁷ See, e.g., AFR 4 at para. 7 ("In light of the insidious nature of the FCC threat to impose sanctions and the failure of the FCC to cite any [P]rivacy [A]ct exemption for the application of any fee, please provide for the grant upon receipt of ... salary and benefits at the level determined by the 2014 International Telecommunication Union Plenipotentiary Conference at Busan for the position of Secretary-General for four years plus three times that amount in treble, exemplary or punitive damages for the violation of my [C]onstitutional rights under the First, Fourth and Tenth Amendments of the Constitution of the United States in light of Secretary Clinton's historic speech at The Hague").

¹⁸ See AFR 3 at para. 3.

¹⁹ Letter from Kirk S. Burgee, Chief of Staff, WCB to William J. Kirsch re FOIA Control No. 2015-377 (May 8, 2015) (recognizing that Mr. Kirsch had already been correctly categorized as an "all others" requester, and revising the fee estimate accordingly).

²⁰ See, e.g., AFR 1 at para. 2 ("Please provide for the grant of my request upon receipt as justice delayed is justice denied and the Commission failure to provide for a timely grant will likely result in a failure for a timely correction of the longstanding flawed FCC international policies that are now becoming apparent to all (except perhaps the Commission) and cause further damage to U.S. network and national security"); AFR 2 at para. 4 ("Please also note that the recent fine by the Commission of AT&T for 'data mining' is inconsistent with the FCC failure to consider

(continued....)

4. ACCORDINGLY, IT IS ORDERED that the five AFRs filed by William J. Kirsch in FOIA Control Nos. 2015-367, 2015-368, 2015-369, and 2015-377 ARE DISMISSED OR DENIED, as set forth herein. Mr. Kirsch may seek judicial review of this action pursuant to 5 U.S.C. § 552(a)(4)(B).²¹

5. The officials responsible for this action are the following: Chairman Wheeler, and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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the possibility of data mining for local number portability or the IANA function in addition to the additional threat to network and national security and involves clear error, arbitrary and capricious reasoning and is an abuse of discretion”); AFR 3 at para. 4 (“...the apparent failure to understand that the departure from the three quarters of a century of success of the framework established by President Wilson and endorsed by President Eisenhower not only reminds us of the admonition that those who do not learn from mistakes of history are condemned to repeat those mistakes, but also represent a clear and present danger to U.S. network and national security and require a waiver in the public interest”); AFR 5 at para. 3 (“Please note that the FCC is using the imposition of fees as a broad barrier against disclosure despite the fact that this is just the sort of roadblock against disclosure that led Congress to liberalize the fee waiver provision for non-commercial requests”).

²¹ We note that as part of the Open Government Act of 2007, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect Mr. Kirsch’s right to pursue litigation. Mr. Kirsch may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448.